FILED
JUN. 4 196
JOHN F. DAVIS, CLE

In the

Supreme Court of the United States

OCTOBER TERM, 1963

No. 1082

ROBERT LEWIS KROGNESS, NEIL H. HART and THOMAS EDGAR RUSSELL, *Petitioners*,

vs.

THE STATE OF OREGON, *Respondent*.

BRIEF IN OPROSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OREGON

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DAILY JOURNAL OF COMMERCE

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JURISDICTION

Respondent, the State of Oregon, respectfully takes the position that this court is without jurisdiction in this matter because there is no Federal Constitutional question presented as the defendants were afforded the protection of the Constitution of the United States and the Constitution of the State of Oregon as regards protection against unreasonable arrest, search and seizure. The constitutional rights of the defendants pertaining to unreasonable search and seizure, of which rights the defendants availed themselves at all steps of the proceedings, have been passed upon by all courts of record available to the defendant in the State of Oregon.

STATEMENT OF THE CASE

The statement of the case presented in the appellant's brief is adequate with the following exception. Under the heading Motion to Suppress found at pages 3 and 4 of appellant's brief the following statement appears:

> "But the magistrate on the preliminary examination had refused evidence on this matter holding it immaterial"

In fact the defendants, who were represented by counsel at the preliminary hearing, were afforded an opportunity, limited only by the rules of evidence, to vigorously cross examine the arresting officer and other witnesses in the area of the nature of the arrest and search and seizure. That there is nothing in the transcript of the preliminary hearing in this matter indicating that the magistrate refused to hear such evidence, and such evidence was in fact heard.

ARGUMENT

It is the position of the State of Oregon that the defendants were afforded, and availed themselves of, every constitutional guarantee of the United States Constitution, and the Constitution of the State of Ore-

gon throughout the proceedings. First, at the preliminary hearing, defendants were afforded an opportunity to examine all witnesses and exhibits in connection with search and seizure. Second, a timely motion to suppress was filed prior to trial, which motion was considered by the trial judge based upon the transcript of the preliminary hearing containing testimony illicited by defendants' counsel during the preliminary hearing. It is further to be noted that all witnesses connected with and active in the arrest, search, and seizure were examined by defense counsel at the preliminary hearing. The trial court then being fully advised of the facts and circumstances from examination of the transcript of the preliminary hearing and upon having heard arguments of the defense counsel in regard to the questions of arrest, search, and seizure denied the motion for suppression of the evidence, granting the defendants the privilege of renewing this objection at the time of the trial. Third, that the defendants exercised this privilege at the time of trial, again with the same witnesses as appeared in the preliminary hearing as respects question of search and seizure, the defendants examining these witnesses a second time on this question. This issue was also argued to the jury by defense counsel at the conclusion of the case. Defendants were also heard by the court on the question of instruc

tions as to the search and seizure, which instructions of the Court subsequently refused.

It is manifestly obvious that defendants were given every opportunity to exercise their privilege against unreasonable arrest, search, and seizures and throughout the entire proceedings the Courts afforded defendants opportunity to exercise these rights in accordance with the constitution of the State of Oregon and the Constitution of the United States, and the judgment of the Circuit Court was subsequently affirmed by the Supreme Court of the State of Oregon.

CONCLUSION

The State of Oregon respectfully concludes that this court is without jurisdiction on the present appeal because in the decision below a reasonable standard commensurate with the requirements of This Court and the requirements of the Supreme Court of the State of Oregon was applied to the question of search and seizure and no constitutional rights of the defendants have been violated.

Respectfully submitted,

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